

July 20, 2010

Mr. SCOTT of Virginia: Mr. Speaker, this legislation addresses a disturbing subject in need of congressional action.

In the late 1990s, Congress was made aware of a growing market of videotapes and still photographs depicting animals, typically small animals, being slowly and sadistically crushed to death. These depictions are commonly referred to as "crush videos." Much of the material features women inflicting torture with their bare feet or while wearing high-heeled shoes. The depictions often appeal to people with a very specific sexual fetish.

Even in States where harming the animals in such a way itself violates State laws prohibiting cruelty to animals, prosecutors had difficulty obtaining convictions. For example, the faces of the persons inflicting the torture were often not shown in the videos; and the locations, times and dates of the acts could not be ascertained from the depictions themselves. So defendants were often able to successfully assert as a defense that the State could not prove its jurisdiction over the place where the acts occurred nor that it could prove that the actions took place within the statute of limitations.

In short, it has been difficult enough to find the perpetrators of the underlying acts of cruelty to animals. Then, even after they have been found, it has been difficult to obtain convictions.

So Congress enacted a new law prohibiting the creation, sale, and possession of the depictions of such acts. The new law was codified as section 48 of title XVIII of the U.S. Code. The motivation for passing the law was to address the sale of crush videos, but the statute was written in such a way that it also could be read, in some circumstances, to apply to more mainstream material, such as videos depicting hunting and fishing and other activity protected by the First Amendment of the Constitution.

Because of this susceptibility to a broader reading, in April the United States Supreme Court invalidated the entire statute in the case *United States v. Stevens*, holding that the law was overbroad and violated the First Amendment. The Court made it clear, however, it did not rule

out the possibility of Congress' adopting a bill that would hold up under constitutional scrutiny.

In May, the Subcommittee on Crime held a hearing about the decision. It heard from witnesses who testified that a narrower legislative approach would likely be constitutional and survive court challenge.

The bill before us is much more narrow than the original law. The most important difference is that the bill would only prohibit the sale of crush videos that are obscene under current law. This would address a key flaw in the original statute because obscenity is outside the protections of the First Amendment. Whereas some of the activity covered by the prior law under the broader reading was, in fact, protected by the First Amendment, a much narrower range of conduct is covered in the depictions prohibited by this bill. Furthermore, this legislation specifically makes it clear that hunting and fishing videos would not be covered by the prohibition.

I commend my colleague from California (Mr. *Gallegly*) and my colleague from Michigan (Mr. *Peters*), who worked together to produce this bipartisan bill. I urge my colleagues to support the bill.